



Entered on Docket
October 13, 2011

Bruce A. Markell

Hon. Bruce A. Markell

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:

CAROLYN MARY SCHIVO,

Debtor.

Case No.: BK-S-05-28163-BAM

Chapter 7

Date: March 21, 2011

Time: 9:30 a.m.

Courtroom: 3

OPINION

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BRUCE A. MARKELL, Bankruptcy Judge:

Rule 9011¹ requires evidentiary support and a basis in law for any factual allegations attorneys make in their motions. In this case, attorney Rulon Huntsman saw a press release describing a new federal law. The press release's summary lead him to believe that he could use this new law to exonerate him from sanctions this court imposed upon him over five years ago. After unsuccessfully trying to confirm the press release's and the law's authenticity, Mr. Huntsman sought to set aside the earlier sanctions based solely upon the law described in the press release. He also asked the court to issue a public apology for previously sanctioning him and to pay damages for the injury to his reputation that the earlier sanctions may have caused.

The press release and the law it described, however, were bogus, and transparently so. When the court asked Mr. Huntsman to justify his motion in light of this revelation, he responded by improperly demanding changes to findings of fact made five years earlier which had been made in connection with the sanctions then imposed.

The court hereby sanctions Mr. Huntsman for this conduct.

I. Facts

Mr. Huntsman's current conduct can only be understood in light to the facts surrounding the earlier sanctions. For this reason, the court starts there.

A BAPCPA and the Dismissal of Twenty-Five Bankruptcy Cases

President George W. Bush signed the Bankruptcy Abuse Prevention and Consumer Protection Act into law on April 20, 2005. Bankruptcy Abuse and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23, 23 (2005) ("BAPCPA"). BAPCPA became effective on October 17, 2005, a Sunday. Pub. L. No. 109-8, § 1501(a), 119 Stat. 23, 216 (2005) ("[T]his act and the amendments made by this Act shall take effect 180 days after the

¹Unless specified otherwise, all Chapter and Section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all Rule references are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. All Civil Rule references are to the Federal Rules of Civil Procedure, Rules 1-86. All Evidence Rule references are to the Federal Rules of Evidence, Rules 101-1103.

1 date of enactment of this Act.”). Thus, cases filed after 11:59 p.m. on October 16, 2005 had
2 to comply with the requirements imposed by BAPCPA.

3 At that time, many bankruptcy attorneys faced an unprecedented surge in clients
4 wanting to file bankruptcy under the “old law.” Mr. Huntsman was one such attorney, and
5 he attempted to file over thirty petitions around the time BAPCPA became effective. A
6 number of Mr. Huntsman’s petitions, however, were not filed before BAPCPA’s midnight
7 deadline. These petitions were thus subject to BAPCPA. They did not, however, comply
8 with the new law: They lacked evidence of prepetition credit counseling, a requirement newly
9 imposed by BAPCPA. *See* 11 U.S.C. § 109(h) (added by Pub. L. No. 109-8, § 106, 119 Stat.
10 23, 37 (2005)).

11 The court dismissed twenty-five cases filed by Mr. Huntsman due to the lack of credit
12 counseling. It then issued an order to show cause to determine whether the dismissals
13 resulted from Mr. Huntsman’s failure to properly or timely file the cases.² The court held
14 hearings on December 6, 2005 and December 12, 2005 on its order to show cause. At these
15 hearings, Mr. Huntsman offered a number of theories as to why the petitions were filed late,
16 and why the old law should nonetheless apply.

17 Mr. Huntsman’s primary defense at the time was that an undetermined systemwide
18 problem with the court’s Case Management/Electronic Case Filing (“ECF”) system
19 prevented him from timely filing the petitions. Several members of the court’s technical and
20 operations staff, however, testified that there were no material gaps.³

23 ²The court issued orders to show cause in each of the twenty-five cases. Since the
24 cases were evenly distributed among the two bankruptcy judges then-active in the Las Vegas
25 division of this District, both judges held common hearings on all matters related to these
twenty-five petitions, including the disgorgement proceedings referred to below.

26 ³The court offered Mr. Huntsman the opportunity to depose these individuals before
27 the hearings, and to cross examine them at the hearings. This testimony revealed that there
28 had been a seven-minute gap in which the court’s ECF system was not functioning, and that
this gap occurred sometime between 2:00 a.m. and 3:00 a.m. on Sunday, October 16, 2005.
Mr. Huntsman never claimed that this gap affected his efforts.

1 Mr. Huntsman then offered the testimony of his paralegal who had attempted to file
 2 the cases before BAPCPA became effective. She testified as to an inability to log into the
 3 court's ECF system. Because of this, she brought the original petitions to the clerk's office
 4 on Monday, October 17, 2005, and attempted to file them over the counter. As these
 5 petitions did not have the manual signature of each client (as they were intended to be filed
 6 electronically), the clerk's office did not accept the petitions for filing. The petitions were
 7 ultimately filed around October 21, 2005.

8 After examining the testimony, the court found that the problem lay not with the
 9 court's ECF system, but with Mr. Huntsman. He apparently had not kept his ECF account
 10 current, so that it "locked him out" of the system. Compounding this problem, he had given
 11 his client files to a paralegal and then left town without giving the paralegal instructions on
 12 how to reach him in an emergency. As a result, none of the twenty-five petitions were filed
 13 before BAPCPA's deadline, and all of the cases were governed by the revised law.

14 The court found that Mr. Huntsman's lack of care caused the dismissal of the twenty-
 15 five cases. It then issued an order to show cause as to why Mr. Huntsman should not be
 16 required to disgorge all fees he accepted in those cases pursuant to Section 329. After a
 17 hearing in February of 2006, the court determined that the services rendered by Mr.
 18 Huntsman in each of the twenty-five cases had no value.⁴ The court then ordered Mr.
 19 Huntsman to disgorge all compensation received, pursuant to Section 329.⁵

20 *B. The April Fool's Day Press Release*

21 After Mr. Huntsman disgorged fees, the court considered the matter concluded. Mr.
 22 Huntsman did not. Almost five years later, on October 13, 2010, Mr. Huntsman filed a
 23 "Motion to Re-open Case, to Consolidate Case(s) and/or to Reconsider and Motion to
 24 Vacate Judgement(s) [*sic*]" (the "Motion to Re-Open"). In the Motion to Re-Open, Mr.

25
 26 ⁴"[W]e are finding under 329(b) that the value of services rendered in each of these 25
 cases was no more than zero." Transcript of February 2, 2006 Hearing at 10 (Dkt. No. 116).

27 ⁵Mr. Huntsman did not appeal either the order dismissing the twenty-five cases or the
 28 order to disgorge fees. Therefore, the factual findings made in 2006 are binding here.

Huntsman requested that the court vacate its previous orders of dismissal. Mr. Huntsman also requested that the court enter orders: (1) acknowledging the existence of a computer virus on the court's computer system that affected his ability to timely file the bankruptcy petitions in question in 2005; (2) acknowledging that this computer virus was the cause of his failure to timely file the cases; (3) arranging for the payment of funds to him to compensate him for the resulting harm both to him and to his law practice; and (4) directing that the court issue an apology to him in the *Nevada Lawyer*, the official publication of the State Bar of Nevada. To say that the relief requested by Mr. Huntsman was extraordinary is an understatement.

The Motion to Re-Open was based upon a press release, allegedly released by Moody's Investor Service, and published by Dow Jones Newswires (the "Press Release").⁶ The entirety of the purported Press Release is replicated here:

PRESS RELEASE: 2 Hour Change Expected to Be Approved by Bush on Bankruptcy Law

Saturday, April 1, 2006, 4:24 pm
 (MORE TO FOLLOW) Dow Jones Newswires
 April 1, 2006, 2006 00:20 ET (05:20 GMT)
 Copyright (c) 2006 Dow Jones & Company, Inc.
 PRESS RELEASE: 2HC-AFJ Virus
 The following is a press release from Moody's Investors Update on 2 hour changes signed by Bush: Congress was called into a special session on March 31, 2006 and amended SB41006 to take into account a computer virus known by Bankruptcy Court's through out the nation as the "2HC-AFJ". President Bush is expected to sign the Bill later today aboard AirForce One. On the effective date of October 17th, the Bankruptcy Courts through out the nation except the Courts utilizing Pacific Standard Time (including the States of California and Nevada) permitted filings up to October 18, 2006 at 12:01 utilizing the Hawaii-Aleutian time zone. Accordingly, Debtors residing in any state utilizing PST time should have had an extra 2 hours to file their bankruptcy cases. The new law passed under 2HC permits the Chief Bankruptcy Judge of each District in the PST zones to pick a random day after giving notice to such citizens in

⁶Mr. Huntsman quoted excerpts of the Press Release in his Motion to Re-Open but did not attach the actual Press Release. While Mr. Huntsman did have a copy of the Press Release available at the first hearing on this matter, he did not file a copy with the court until he responded to the court's show cause order.

1 *that state that they may file bankruptcy under the old*
 2 *bankruptcy code during a special 2 hour time frame.*

3 April 1, 2006, 2006 00:20 ET (05:20 GMT)

4 The Press Release relates a series of events that seem fantastic.⁷ The events described
 5 in it, however, could be easily verified. There are numerous sources available to check
 6 congressional activity, the status of bills, and whether a bill has become law. Mr. Huntsman,
 7 however, did not check or research any of these. As a result, his motion did not cite to any
 8 provision in the United States Code, to any public law, or to any other accepted authority
 9 that would indicate formal enactment of the law discussed.⁸

10 Before hearing this matter, the court conducted independent legal research to
 11 ascertain the status of the law referred to in the Press Release. In less than thirty minutes, the
 12 court verified: that no law had ever been introduced, debated, or passed addressing a
 13 computer virus known as “2HC-AFJ;” that no legislation was passed during 2006 which
 14 addressed any problem of any kind with computers used by any bankruptcy court; and that
 15 since the 109th Congress was in session during April 2006, a special session was both
 16 unnecessary and impossible. Further, this research revealed that the President of the United
 17 States signed no laws on April 1, 2006, let alone while aboard Air Force One. In short, the
 18 Press Release appeared to be nothing more than a cruel canard perpetrated on Mr.
 19 Huntsman by persons unknown.

20 *C. Proceedings Related to Mr. Huntsman’s Motion to Re-Open*

21 The court heard the Motion to Re-Open on November 16, 2010. At that time, the
 22 court told Mr. Huntsman of its concerns regarding the authenticity of the Press Release and
 23 the law cited. Mr. Huntsman, however, still maintained the propriety of his position,
 24

25 ⁷Not to mention nonsensical. If the court’s computers had erroneously used the
 26 Hawaiian-Aleutian time zone for Nevada filers, those debtors would have had an *extra* two
 27 hours to file, as the Hawaiian-Aleutian time zone is west of the court.

28 ⁸Mr. Huntsman made the argument that he did not have the resources to do the
 necessary research. The court addresses this position in note 13, *infra*.

1 although he did request additional time to investigate the matter. The court granted Mr.
2 Huntsman's request.

3 The court also placed Mr. Huntsman on notice that if he was unable to authenticate
4 or otherwise verify the authenticity of the Press Release or further explain his actions, the
5 court would likely initiate proceedings to determine if his conduct violated Rule 9011. The
6 court explicitly directed Mr. Huntsman to conduct further research to determine whether the
7 purported law had actually been enacted by the United States Government.⁹

8 Before the continued hearing date, Mr. Huntsman unsuccessfully attempted to
9 withdraw the Motion to Re-Open.¹⁰ Despite his apparent concession, he nonetheless
10 maintained his righteousness; his declaration supporting the withdrawal stated: "I still believe
11 that some computer glitch prevented the timely filing of the referenced bankruptcy
12 petition(s) I believe that former U.S. Trustee attorney, Barry Jenkins, and others were
13 aware of some computer problems at the time in question."¹¹

14 During the continued hearing on January 11, 2011, Mr. Huntsman made an oral
15 motion to withdraw the Motion to Re-Open. The parties present did not object, and the
16 court granted the oral motion. However, the court explicitly retained jurisdiction to
17 determine whether Mr. Huntsman's conduct violated Rule 9011.

18
19 ⁹When it instructed Mr. Huntsman to verify whether the law in question had been
20 enacted, the court did not consider this to be an extraordinary request. Any competent
21 attorney should be able to verify the existence of a federal law. Apparently, Mr. Huntsman
22 did consider the request extraordinary. He requested assistance from Harry Reid, United
23 States Senator from Nevada, and Majority Leader of the Senate. Senator Reid's response is
24 reprinted in Appendix I.

25 ¹⁰The Office of the United States Trustee had filed an opposition to Mr. Huntsman's
26 Motion to Re-Open, and thus Mr. Huntsman could not unilaterally withdraw his motion.
27 Rule 7041 (made applicable by Rule 9014(c), and incorporating Civil Rule 41).

28 ¹¹It is worth noting that Mr. Jenkins, who is now an administrative law judge, took the
time to respond to this allegation, stating: "I have no knowledge of the computer problems
with the Electronic Court Filing system ("ECF") to which Mr. Rulon J. Huntsman, Esq.
makes reference." Mr. Jenkins further stated: "I never made any representations to Mr.
Huntsman or his staff concerning knowledge of ECF computer problems, viruses, or
legislation relating thereto." While Mr. Huntsman's statement regarding Mr. Jenkins'
knowledge of matters may have also violated Rule 9011, the court simply considers it as an
aggravating factor with respect to the type of sanction imposed.

1 After the hearing, the court ordered Mr. Huntsman to show cause why he had not
2 violated Rule 9011 by filing and later advocating the Motion to Re-Open. The court's order
3 placed Mr. Huntsman on notice that it was considering each, and possibly all, of the
4 following sanctions:

- 5 (1) A bar on filing any motion to reconsider or set aside an order of this court
6 unless such motion had been pre-screened and found to have initial merit by
7 this court; or
- 8 (2) A referral to the State Bar, to allow that body to follow up, should it deem
9 appropriate, on Mr. Huntsman's prior public reprimand with their own
10 sanctions; or
- 11 (3) A public reprimand in the form of a published opinion explaining the
12 impropriety of Mr. Huntsman's actions under Rule 9011 and further detailing
13 the specific sanctions imposed.

14 Mr. Huntsman appeared on his own behalf at the March 21, 2011 hearing on the
15 Order to Show Cause.¹² In response to concerns about the use of the Press Release, Mr.
16 Huntsman stated that he experienced considerable frustration in trying to authenticate the
17 Press Release and that he had endeavored to do so for roughly two years before filing the
18 Motion to Re-Open. He had made several phone calls to the United States Bankruptcy
19 Court, District of Hawaii, in an effort to verify the facts contained within the Press Release,
20 to no avail. He had also contacted the Dow Jones News Service, among other news services,
21 and received no support. He had conducted online research without success. He also asked
22 an unidentified friend he considered to be a more competent online researcher to verify
23

24 ¹²Mr. Huntsman was represented by another attorney, Mr. Brett J. Marshall, at the
25 January 11 hearing. A disagreement developed between Mr. Huntsman and Mr. Marshall
26 after the January 11 hearing. Mr. Marshall alleged that Huntsman had filed a response to the
27 court's order to show cause under Mr. Marshall's name and bar number without Mr.
28 Marshall's permission. The court allowed Mr. Marshall to withdraw on that basis.

The court made no further findings regarding Mr. Marshall's withdrawal. This
opinion is without prejudice to, and in no way bars, any action that any other disciplinary
body may take with respect to these actions.

1 whether the law in question had been passed; this friend could not find any evidence of its
 2 existence. Mr. Huntsman even went so far as to retain the National Legal Research Group,
 3 which similarly could not find any evidence of the law.¹³

4 Against this background, Mr. Huntsman admitted at the first order to show cause
 5 hearing that he was less than certain that the law existed when he filed the Motion to Re-
 6 Open. He stated that he nonetheless proceeded to file the Motion to Re-Open when he did
 7 because he was concerned that an unidentified statute of limitations would soon run, barring
 8 him from receiving the relief to which he felt entitled.¹⁴ After giving Mr. Huntsman an
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10
 11 ¹³Mr. Huntsman alleged that he was unable to independently verify the accuracy of
 12 the Press Release or the existence of the law in question because his office does not
 13 subscribe to either Westlaw or Lexis. This alone gives rise to concerns as to the
 14 reasonableness of Mr. Huntsman's inquiry into the matter, *Gutierrez v. City of Hialeah*, 729
 15 F.Supp. 1329, 1332 (S.D. Fla. 1990) (attorney's inquiry was not reasonable within the
 16 meaning of Civil Rule 11 where the attorney did not consult available "basic legal research
 17 tools, such as citators, digests, annotated codes, or computerized searches") (citations
 18 omitted); *Blake v. Nat'l Casualty Co.*, 607 F.Supp. 189, 191 n.4 (C.D. Cal. 1984) (where
 19 attorney did not shepardize relevant case law, did not consult an annotated code or a digest,
 20 and failed to conduct a computer search, the attorney's inquiry was not reasonable for the
 21 purposes of Civil Rule 11). There are many free legal research tools available to attorneys
 22 such as Mr. Huntsman. Not only could he consult one of the many law libraries in Nevada,
 23 but as a member of the State Bar of Nevada, Mr. Huntsman has free access to the Fastcase
 24 legal research database. See *State Bar Member Benefits: Fastcase*, STATE BAR OF NEVADA,
 25 <http://www.nvbar.org/content/fastcase> (last visited Oct. 12, 2011). In addition, the
 26 Thomas website, maintained by the Library of Congress, is freely available to the public. It is
 27 a particularly thorough and accurate source for research concerning federal legislation. See
 28 *Thomas*, THE LIBRARY OF CONGRESS, <http://thomas.loc.gov> (last visited Oct. 12, 2011).
 Finally, the Legal Information Institute, affiliated with the Cornell University Law School,
 maintains a website which makes available, free of charge, the United States Code, the Code
 of Federal Regulations, Supreme Court cases dating to 1990, the Uniform Commercial Code
 and many other legal resources too numerous to fully list here. See *Legal Information Institute*,
 CORNELL UNIVERSITY LAW SCHOOL, <http://www.law.cornell.edu> (last visited Oct. 12,
 2011). The lack of a Westlaw or Lexis subscription, therefore, cannot be said to be an
 impediment to Mr. Huntsman's ability to confirm whether or not the federal law he claimed
 to exist did, in fact, exist.

24 ¹⁴Mr. Huntsman has never identified the statute of limitations that caused him
 25 concern. The Motion to Re-Open appears to rely upon Rule 9024, which incorporates Civil
 26 Rule 60(b)(6). Motions brought under Civil Rule 60(b)(6) are subject to no explicit statute of
 27 limitations; the rules requires only that such motions "be made within a reasonable
 28 time" Civil Rule 60(c)(1). Therefore, Mr. Huntsman's argument that he filed the Motion
 to Re-Open to avoid the running of a statute of limitations is without merit, and represents
 yet another instance where Mr. Huntsman failed to appropriately research his factual and
 legal positions before representing those positions to the court.

1 opportunity to present argument and evidence at the hearing, the court took the matter
2 under submission.

3 *D. Mr. Huntsman's Motion to Redact and Related Proceedings*

4 After the court took the matter under submission, it determined that a reasoned
5 disposition of this matter would require reference to the 2005-06 proceedings involving Mr.
6 Huntsman as well as a record of the hearings leading up to the hearing on the Rule 9011
7 motion. The court therefore ordered that the 2005-06 and the 2010-11 hearings be
8 transcribed and placed on the court's docket.¹⁵ The last of these transcripts were filed on
9 May 19, 2011.

10 Mr. Huntsman objected. On June 8, 2011, he filed a "Request and Motion for
11 Redaction" (the "Motion to Redact"). In the Motion to Redact, Mr. Huntsman sought to
12 redact or seal portions of the 2005-06 hearing transcripts. The motion did not, however,
13 specify which transcript, or which portions of the transcript, Mr. Huntsman wanted redacted
14 or sealed. The motion was also devoid of any legal argument or any citation. Instead, the
15 one-page motion contained a number inflammatory comments directed at the court,
16 including statements that that the contents of the transcript in question were "unforgiving,
17 unfair and unkind" to Mr. Huntsman and that "[p]osting it for public view seemed calculated
18 to harm, injure and embarrass [Mr. Huntsman] unnecessarily."

19 After reviewing the docket, the court determined that the only transcript that could
20 potentially be redacted under Mr. Huntsman's motion was of the hearing held on February 2,
21 2006. Accordingly, the court treated the Motion to Redact as applying only to the transcript
22 of that hearing.¹⁶ The transcript contained only the court's unappealed findings of fact and
23

24
25 ¹⁵The court ultimately obtained and filed transcriptions of the December 12, 2005,
26 December 19, 2005, February 2, 2006, November 16, 2010, January 11, 2011, and March 21,
2011 hearings.

27 ¹⁶Under the local rules, the time period to file redaction requests for all of the
28 transcripts then filed in the case, except for the transcript of the hearing on February 2, 2006,
had elapsed. *See* Local Rule 9037.

1 conclusions of law supporting the order requiring Mr. Huntsman to disgorge payments made
2 to him by his clients, as discussed above.¹⁷

3 On June 17, 2011, the court denied the Motion to Redact without a hearing.¹⁸ In the
4 order, the court stated that Mr. Huntsman's request to redact, which did not specify any
5 reason for the request, was insufficient. Because it appeared that Mr. Huntsman had again
6 filed a motion which violated Rule 9011, the court's order denying the motion also required
7 Mr. Huntsman to appear and show cause why his conduct in filing the Motion to Redact did
8 not represent another, and independent, violation of Rule 9011. The court further placed
9 Mr. Huntsman on notice that it was considering a significant monetary fine of \$10,000 or
10 more as an appropriate deterrent sanction. Mr. Huntsman received notice of the entry of the
11 order on June 17, 2011 via the court's ECF system.

12 The court was surprised, then, on June 20, 2011, when Mr. Huntsman filed a
13 declaration in support of the already-denied Motion to Redact. The declaration was
14 accompanied by a copy of the transcript of the February 2, 2006 hearing, marked with Mr.
15 Huntsman's handwritten "changes."

16 On June 24, 2011, the court entered an order requiring Mr. Huntsman to explain why
17 he had filed documents in support of a motion that had already been denied, and why the
18 court should not consider these filings improper or unsupported within the meaning of Rule
19 9011(b).¹⁹

22 ¹⁷In addition, given that such hearings were joint hearings before the undersigned
23 judge and Judge Linda B. Riegler, *see* note 2 *supra*, these were the jointly adopted findings of
both judges.

24 ¹⁸Mr. Huntsman failed to obtain a hearing date for the Motion to Redact, as required
25 by the local rules, before the court entered its order denying the motion. *See* Local Rule
9014.

26 ¹⁹Because the conduct giving rise to the two orders to show cause was related, and
27 thus resolution of one of the orders to show cause seemed inextricably entangled with the
28 other, the court vacated submission of the first order to show cause, and ordered that all
conduct identified as potentially sanctionable be heard at the same time.

1 Mr. Huntsman timely filed his response to the court's order to show cause on July 1,
2 2011. He admitted that he had failed to "support the subject motion with Points and
3 Authorities as required by the applicable rules." He stated that his purpose in filing the
4 Motion to Redact was not improper within the meaning of Rule 9011(b) because he was
5 merely attempting to protect his own reputation and expunge certain unflattering comments
6 from the transcript of the court's ruling. Mr. Huntsman did not address the fact that he had
7 filed a declaration, accompanied by a transcript showing his suggested changes, in support of
8 the already denied Motion to Redact.

9 Mr. Huntsman finally addressed this issue on July 6. He then asserted that it was
10 "factually incorrect" that the court had denied the Motion to Redact prior to the submission
11 of the declaration and accompanying transcripts. He claimed that the supporting declaration
12 and transcript were "e-filed the very same day, at or near the same time as the Request and
13 Motion to Redact." He further stated that at the time the declaration and transcript were
14 filed, he had not yet received the court's order denying the Motion to Redact. Mr. Huntsman
15 also suggested that there was a misunderstanding between him and the court as to when the
16 declaration and transcript were filed.

17 In a "Request for Explanation" filed on July 7, 2011, the court agreed that there was a
18 misunderstanding. The court asked Mr. Huntsman to address why the chronology available
19 on the docket of these proceedings differed considerably from the one outlined by Mr.
20 Huntsman in his latest pleading. Using the publicly-available information from the court's
21 docket, the court detailed the dates and times of the relevant filings. The chart provided to
22 Mr. Huntsman is reproduced here:

Document	Dkt. No.	Date Filed	Time Filed
Request and Motion for Redaction	119	June 8, 2011	14:41:19
Order Denying Motion for Redaction and Order to Show Cause	120	June 17, 2011	15:48:00

1	Declaration of Rulon Jay Huntsman in Support of Request and Motion for Redaction	123	June 20, 2011	14:58:36
2				
3	Redacted Transcript Part #1	124	June 20, 2011	15:26:31
4	Redacted Transcript Part #2	125	June 20, 2011	15:26:31
5	Order Regarding Declaration and Redacted Transcripts Filed by Rulon J. Huntsman	126	June 24, 2011	11:20:31
6	Rulon J. Huntsman, Esq.'s Response to Order to Show Cause	130	July 1, 2011	16:05:17
7				
8	List of Witnesses and Exhibits	131	July 1, 2011	16:10:56
9	Response and Explanation to Order Dated June 24, 2011 Regarding Declaration and Redacted Transcripts E-Filed by Rulon J. Huntsman	132	July 6, 2011	11:06:02
10				

11 The court also asked Mr. Huntsman to explain his claim that he had not received notice of
 12 the court's order denying the Motion to Redact prior to filing the supporting declaration and
 13 transcript, since he presumptively had notice of its entry via an email from the court's ECF
 14 system as soon as the order was entered on the docket.

15 On July 9, 2011, Mr. Huntsman filed a response to the court's request for
 16 explanation. He apologized for the misunderstanding, stated that he relied on his staff to
 17 draft and upload documents, and admitted that the declaration and transcript were not filed
 18 contemporaneously with the Motion to Redact. He admitted that "I did not have the Court's
 19 Order in hand denying my Request and Motion for Redaction at the time I e-filed my
 20 version of the redacted transcript." He then tried to disclaim any blame for the
 21 misstatements, averring that "I hope the Court is not trying to make much more out of these
 22 oversights than is necessary," and "I hope that the Court is not on a campaign to
 23 outmaneuver my office in this instance." He seemed to view the court as being overzealous
 24 in its insistence on fidelity to facts: "I feel it borders on abuse and do not believe I can
 25 receive a fair hearing on July 14, 2011 before Your Honor." Mr. Huntsman thus requested a
 26
 27
 28

1 “different, more neutral judge” to preside at the scheduled order to show cause, a request
2 which was denied.²⁰

3 Mr. Huntsman appeared at the July 14, 2011 hearing. The court allocated an entire
4 morning for his response. Mr. Huntsman asked the court to accept his respectful apologies,
5 and asserted that he did not have any malign intention in filing the Motion to Redact, only
6 that he had made mistakes.²¹ The court took the matter under submission.

7 **II. Analysis of Mr. Huntsman’s Violations of Rule 9011**

8 The court will first detail its factual findings with regard to the Press Release and will
9 then analyze Rule 9011’s requirements. The court will then turn to a discussion of the facts
10

11
12 ²⁰The court deemed Mr. Huntsman’s request an ex-parte motion for recusal. It
13 denied that request in a seven-page opinion filed on July 14, 2011. Mr. Huntsman has not
14 appealed that denial.

15 ²¹Mr. Huntsman made a number of arguments during the hearing on the court’s
16 second order to show cause, most of which were relevant to the matter at hand, and all of
17 which the court has taken into consideration in drafting this opinion. The arguments
18 relevant to the resolution of this matter are addressed in this opinion. However, some of Mr.
19 Huntsman’s other arguments bear mention and clarification.

20 At one point during the hearing, Mr. Huntsman argued that his conduct did not
21 violate Rule 9011(b)(4). The court was never concerned that Mr. Huntsman’s denials of
22 factual contentions were not warranted on the evidence, or were not reasonably based on a
23 lack of information or belief, and as such, the court’s orders to show cause were not based
24 on Rule 9011(b)(4). This was primarily because the court did not think that Mr. Huntsman
25 had denied any factual contentions. Similarly, the court does not consider the Motion to
26 Redact as the denial of a factual contention. The transcript in question memorialized the
27 court’s ruling, and a ruling is not a factual contention, it is fact.

28 Similarly, Mr. Huntsman argued that because he sought to withdraw the Motion to
Re-Open, he complied with the twenty-one day safe-harbor provision contained within Rule
9011(c)(1)(A). It is true that Mr. Huntsman attempted to withdraw the Motion to Re-Open,
but the safe-harbor provision in Rule 9011 does not apply to these proceedings. It applies
only to proceedings initiated by motion, not those initiated upon the court’s own initiative, as
is here the case. *Compare* Rule 9011(c)(1)(A), *with* Rule 9011(c)(1)(B).

Finally, Mr. Huntsman argued that the court should be mindful of the harm a
sanctions opinion can cause to an attorney’s reputation. The court agrees with Mr.
Huntsman that an attorney’s professional reputation is his or her most valuable asset, and
that a good reputation, once tarnished, may never recover its former luster. But the court
disagrees with Mr. Huntsman that the court has a duty to safeguard an attorney’s
professional reputation. An attorney’s reputation belongs to the attorney, and it is the
attorney’s to safeguard. If Mr. Huntsman’s reputation suffers because of this opinion, it is
not the opinion that is the source of the problem; it is Mr. Huntsman’s own conduct. The
court’s opinion operates in much the same way as a photograph; it captures, but does not
create, its subject.

1 supporting a finding that Mr. Huntsman's conduct fell well below that which is required by
2 Rule 9011.²²

3 *A The Press Release Was Obviously Fake*

4 The court finds that the Press Release is not genuine, and obviously so. The same is
5 true for the putative federal law to which it refers. After a comprehensive search, the court
6 could not discover the introduction, debate, or enactment of any law addressing any
7 problems with any bankruptcy court computers in 2005 or 2006. The 109th Congress was in
8 session during the relevant time period, and thus calling a special session would have been
9 unnecessary and procedurally impossible. No law has ever been introduced, debated or
10 passed addressing a "2HC-AFJ" computer virus. The President of the United States signed
11 no laws on April 1, 2006. The Press Release is dated April 1, 2006, which, as the court noted
12 in its order to show cause, is April Fool's Day. The Press Release contains spelling and
13 grammatical errors and is not formatted as would be a genuine press release.

14 Mr. Huntsman conceded in both his response to the court's first order to show cause
15 and during the first hearing that the Press Release was not genuine, despite being convinced
16 of its authenticity during the November 16, 2010 hearing. He did not then, and has not yet,
17 explained how he came into possession of the Press Release. Nor has he further elaborated
18 as to why he thought the Press Release was genuine, despite its myriad deficiencies, and
19 despite his significant, though unsuccessful, efforts to obtain third-party verification as to its
20 authenticity. The court declines to guess at the true origin of the Press Release, although its
21 April 1st date may give some clues. The court simply finds that the document is not a

22
23 ²²With the exception of the motion for recusal, Mr. Huntsman has not complained of
24 any procedural deficiencies in this matter. The court has reviewed the procedures employed
25 in determining whether Mr. Huntsman violated Rule 9011 and whether to levy sanctions
26 against him for those violations. The court concludes that the procedures employed comply
27 with Rule 9011. The court notified Mr. Huntsman of its concerns in writing through the
28 orders to show cause. The orders placed Mr. Huntsman on notice of the basis for the
possible imposition of sanctions and the potential sanctions the court was considering. Mr.
Huntsman had an opportunity to respond, which he did. He was given the opportunity to
present argument and evidence. The court took the matter under submission to allow time
to pass and thereby ensure a thorough and objective review of the record when making its
determination.

genuine press release from Moody's Investors, published by Dow Jones Newswires. It was not, and is not, admissible evidence of anything. Mr. Huntsman should have known this prior to filing the Motion to Re-Open. He did not. This failure constitutes one of Mr. Huntsman's violations of Rule 9011, to which the court now turns.

B. The Requirements of Rule 9011

Rule 9011(b) addresses representations made by all who file or appear in bankruptcy court. It states:

By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, —

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law; [and]

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery

Rule 9011(b). Rule 9011(b) allows a bankruptcy court to independently assess violations of Rule 9011. *See* Rule 9011(c)(1)(B) ("On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.").

Under Rule 9011(b)(3), bankruptcy courts have the authority to sanction attorneys who present (sign, file, submit, or later advocate) a pleading that is frivolous. *Winterton v. Humitech of Northern California, LLC (In re Blue Pine, LLC)*, ___ B.R. ___, ___, 2011 WL 4482127, at *7 (B.A.P. 9th Cir. Aug. 22, 2011).²³ According to the Bankruptcy Appellate Panel, "[t]he word 'frivolous,' when used in connection with sanctions denotes a filing that is

²³The language of Rule 9011 parallels that of Civil Rule 11. Therefore, courts analyzing sanctions under Rule 9011 may appropriately rely on cases interpreting Civil Rule 11. *See Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 829 (9th Cir. 1994).

both baseless—lacks factual foundation—and made without reasonable competent inquiry.” *Id.*, at *8 (citing *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990)).²⁴ Under this standard, “[a]n attorney has a duty to conduct a reasonable factual investigation as well as to perform adequate legal research that confirms that his position is warranted by existing law” *In re Blue Pine, LLC*, ___ B.R. at ___, 2011 WL 4482127, at *8 (citing *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002)). “Thus, a finding that there was no reasonable inquiry into either the facts or the law is tantamount to a finding of frivolousness.” *Id.* (citing *Townsend*, 929 F.2d at 1362).

The court measures the conduct of attorneys who appear before it “objectively against a reasonableness standard, which consists of a competent attorney admitted to practice before the involved court.” *Valley Nat’l Bank of Ariz. v. Needler (In re Grantham Bros.)*, 922 F.2d 1438, 1441 (9th Cir. 1991); *see also G.C. & K.B. Inv., Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir. 2003); *In re Blue Pine, LLC*, ___ B.R. ___, ___, 2011 WL 4482127, at *8; *In re Sanford*, 403 B.R. 831, 841 (Bankr. D. Nev. 2009). As a consequence, an attorney may act negligently and still violate Rule 9011, as a finding of “[s]ubjective bad faith is not necessary; the attorney must only fail to meet” the objective standard set forth in Rule 9011. *Sanford*, 403 B.R. at 841 (citing *Smyth v. City of Oakland (In re Brooks-Hamilton)*, 329 B.R. 270, 283 (B.A.P. 9th Cir. 2005), *affirmed in relevant part, reversed in part*, 271 Fed. Appx. 654 (9th Cir. 2008) (in turn citing *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 830 (9th Cir. 1986), *overruled on other grounds by Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384 (1990))).

C. Mr. Huntsman’s Violations of Rule 9011

After considering the above legal standards, the court finds that Mr. Huntsman violated paragraphs (2) and (3) of Rule 9011, for the reasons detailed below.

²⁴The Seventh Circuit has suggested, but not adopted, another standard of frivolousness: “One standard for frivolousness is risibility—if you start laughing when repeating the argument, then it’s frivolous.” *Mars Steel Corp. v. Continental Bank N.A.*, 880 F.2d 928, 934 (7th Cir. 1989) (en banc).

1 1. *Violation of Rule 9011(b)(2)*

2 Paragraph (2) of Rule 9011(b) requires that “the claims, defenses, and other legal
3 contentions” contained within a motion be “warranted by existing law” and “nonfrivolous.”
4 Rule 9011(b)(2). When Mr. Huntsman filed the Motion to Re-Open and the Motion to
5 Redact, and later advocated the positions contained in each, he certified that to the best of
6 his “knowledge, information, and belief, formed after an inquiry reasonable under the
7 circumstances” that the motions complied with Paragraph (2). Rule 9011(b)(2). This
8 certification includes the duty “to conduct a reasonable factual investigation as well as to
9 perform adequate legal research that confirms that his position is warranted by existing
10 law” *In re Blue Pine, LLC*, __ B.R. at ___, 2011 WL 4482127, at *8 (citing *Christian,*
11 *Inc.*, 286 F.3d at 1127). If the attorney does not conduct a reasonable inquiry into either the
12 facts or the law, pleadings thereafter filed are “frivolous” and sanctionable. *Id.* (citing
13 *Townsend*, 929 F.2d at 1362).

14 a. **The Motion to Re-Open**

15 The law which Mr. Huntsman claimed supported the Motion to Re-Open was never
16 enacted. This fact could have been easily discovered by any competent attorney. Finding
17 and verifying the existence of a federal law is a staple of first year legal instruction. If a
18 reasonably competent attorney had been presented with the Press Release, she would have
19 investigated whether the Press Release was genuine. She would have also conducted legal
20 research to determine whether or not Congress had enacted the law referred to in the Press
21 Release. If that inquiry had produced no evidence that such a law had ever been passed, the
22 reasonably competent attorney would have concluded that the Press Release was a hoax.
23 From that, she would have concluded that the purported Press Release was something that
24 could not form any basis, let alone the sole basis, for a motion to set aside a court order.

25
26 The violation of Rule 9011(b)(2) here is not that Mr. Huntsman failed to conduct an
27 inquiry. He clearly conducted one. He conducted online research; sought the assistance of a
28

1 friend; contacted the purported source of the Press Release; contacted the bankruptcy court
2 in Hawaii; and even retained the services of a legal research firm. He took all of these
3 actions *before* he filed the Motion to Re-Open. But he did not heed or believe the results of
4 his inquiries. In the face of evidence which should have convinced him, as it would have
5 convinced the reasonably competent attorney, that the Motion to Re-Open was not
6 warranted by existing law, Mr. Huntsman allowed his desire for vindication to obscure that
7 which should have been clear. When he filed the Motion to Re-Open, and when he later
8 advocated the positions contained therein, Mr. Huntsman's conduct fell below that which
9 this court objectively expects of a reasonably competent attorney practicing before it. *See*,
10 *e.g.*, *Brandt v. Schal Assocs., Inc.*, 121 F.R.D. 368, 374 (N.D. Ill. 1988) (plaintiff "cannot rely on
11 the results of extensive post-filing discovery to provide justification for bringing the suit in
12 the first place"); *see also* *Conservative Club of Washington v. Finkelstein*, 738 F. Supp. 6, 15 (D.D.C.
13 1990) (sanctions imposed, although counsel had "researched the issues, obtained opinions
14 from independent counsel, and evaluated the propriety of filing the action."). The court thus
15 finds that in so doing, Mr. Huntsman violated Rule 9011(b)(2).

16 **b. The Motion to Redact**

17 The Motion to Redact did not cite any statute, rule, case, or secondary source in
18 support of the requested relief. Given this lack of support, the court conducted its own
19 research into the matter, considering the Local Bankruptcy Rules, the Federal Rules of
20 Bankruptcy Procedure, and the United States Bankruptcy Code. The court also considered
21 applicable authority from courts across the United States. The results of this research were
22 that the Motion to Redact was not warranted by any existing law.

23 Even after filing the Motion to Redact, Mr. Huntsman never explained what authority
24 would support the redaction of a transcript which contains a court's final findings of fact and
25 conclusions of law. Mr. Huntsman did not address this issue in the motion; he did not
26 address it in his response to the order to show cause, and he had no answer when questioned
27 on this point during the hearing on the matter. Again, the court concludes that there is no
28

1 legal basis for a request to redact findings of fact and conclusions of law when the movant
2 presents no evidence or law for that request.

3 Unlike with the Motion to Re-Open, Mr. Huntsman's violation here is not that he
4 failed to heed the results of an investigation into the legal basis for the relief he requested, it
5 is that he failed to conduct any investigation before seeking relief. Had he conducted even a
6 cursory investigation, he would have realized that the no authority supported the relief he
7 was requesting, and, as such, that his claim for relief was not warranted by existing law, and
8 therefore frivolous within the meaning of Rule 9011(b). *In re Blue Pine, LLC*, 2011 WL
9 4482127, at *8.²⁵

10 2. *Violation of Rule 9011(b)(3)*

11 Paragraph (3) of Rule 9011(b) requires that "allegations and other factual
12 contentions" in a court filing "have evidentiary support" at the time the filing is made. Rule
13 9011(b)(3). When Mr. Huntsman filed the Motion to Re-Open and the Motion to Redact,
14 and later advocated on behalf the factual allegations contained in each, he was certifying that
15 the motions complied with Paragraph (3) to the best of his "knowledge, information, and
16 belief, formed after an inquiry reasonable under the circumstances" Rule 9011(b).

17 a. **The Motion to Re-Open**

18 Rule 9011(b)(3) uses the same reasonably competent attorney standard. Here, such
19 an attorney would have conducted an investigation sufficient to form a belief that the
20 allegations and other factual contentions contained within the Motion to Re-Open were
21 supported by admissible evidence. This would have required an assessment of the Press
22 Release's admissibility into evidence. As the Press Release is not self-authenticating within
23
24

25 ²⁵Mr. Huntsman later advocated on behalf of the Motion to Redact by filing the
26 supporting declaration and transcript and in other pleadings he filed subsequent to the entry
27 of the order denying the motion. The court does not consider these subsequent filings
28 independent violations of Rule 9011, even though the argument could be made that they are.
Instead, the court considers these filings aggravating factors which support the imposition of
the sanctions detailed below.

1 the meaning of Evidence Rule 902,²⁶ a reasonably competent attorney would have
 2 authenticated the Press Release as specified in Evidence Rule 901, before filing it with the
 3 court.

4 But Mr. Huntsman did not even attempt to authenticate the Press Release. Indeed,
 5 as mentioned above, Mr. Huntsman did not even provide the Press Release to the court until
 6 *after* he had already been allowed to withdraw his Motion to Re-Open. Mr. Huntsman had
 7 ample time to research this simple issue, yet, he chose to proceed with unauthenticated and,
 8 as it turned out, fake evidence. Without the Press Release in evidence, Mr. Huntsman's
 9 factual contentions lacked evidentiary support. And that violated Rule 9011(b)(3).²⁷

10 b. The Motion to Redact

11 The Motion to Redact is also lacking sufficient evidentiary support within the
 12 meaning of Rule 9011(b)(3). Mr. Huntsman stated in the Motion to Redact that the
 13 transcript in question contained the court's personal opinions as to his competence and
 14

15 ²⁶Mr. Huntsman contends that he did not need to authenticate the Press Release
 16 under Evidence Rule 902, made applicable to this matter by Rule 9017, because the Press
 17 Release was self authenticating. This argument is without merit.

18 Mr. Huntsman is correct that "[e]xtrinsic evidence of authenticity as a condition
 19 precedent to admissibility is not required with respect to . . . (6) Printed materials purporting
 20 to be newspapers or periodicals." Evidence Rule 902. The court concludes, however, that
 21 documents such as the Press Release are not within the scope of Evidence Rule 902. *See*
 22 *Trans-Tec Asia v. M/V Harmony Container*, 435 F.Supp.2d 1015, 1031 n.20 (C.D. Cal. 2005).

23 Even if Mr. Huntsman's argument was correct, it would not apply here. The Press
 24 Release was not filed with the court until *after* Mr. Huntsman's Motion to Re-Open was
 25 withdrawn. Put another way, an exhibit cannot be self-authenticated if it is never filed with
 26 the court. Furthermore, the fact that Mr. Huntsman spent roughly two years endeavoring to
 27 authenticate the Press Release shows that even he does not place great faith in this argument.
 28 Finally, the Press Release's authenticity is not determinative. Even if the Press Release were
 authentic, Mr. Huntsman would still have been obligated by Rule 9011 to conduct further
 investigation into its factual accuracy as to the new law's passage.

²⁷This court is not alone in determining that the failure to heed the results of an
 investigation, even without a finding of wrongful intent, is sufficient to justify the imposition
 of sanctions under Rule 9011. The court agrees that "a pure heart no longer excuses an
 empty head." *In re Hermosilla*, 450 B.R. 276, 290 (Bankr. D. Mass. 2011) (quoting *Lancelottie*
v. Fay, 909 F.2d 15, 19 (1st Cir. 1990)). Some courts have made the point in even clearer
 language, finding that "[s]tupidity—acting without sufficient forethought—is a legitimate basis
 for imposing sanctions upon an attorney." *In re Hein*, 341 B.R. 903, 905 (Bankr. N.D. Ind.
 2006). Mr. Huntsman, when he decided to file the Motion to Re-Open and the Motion to
 Redact, failed to exercise appropriate forethought.

1 character. He also stated that the transcript did not go to the “heart of the matter,” as the
2 transcript did not address the existence of computer glitches, but instead focused on whether
3 or not Mr. Huntsman should have been ordered to disgorge the fees he received.²⁸ These are
4 factual allegations, and, as such, must have evidentiary support to satisfy Rule 9011(b)(3).
5 Mr. Huntsman was specifically instructed in the second order to show cause to address how
6 these factual allegations were supported by admissible evidence.

7 Despite this instruction, Mr. Huntsman did not offer any evidence to support his
8 factual allegation that the transcript contained the court’s personal opinions about him. A
9 cursory review of the transcript shows that it states faithfully the court’s oral ruling and
10 contains the court’s findings of facts and conclusions of law. A ruling on a matter is not the
11 court’s personal opinion.

12 A reasonably competent attorney would have recognized that he lacked evidentiary or
13 legal support for his position, and would have also recognized that the allegations made
14 mischaracterized the content of the transcript in question. Unlike the reasonably competent
15 attorney, however, Mr. Huntsman did not arrive at this realization. Worse, he failed to
16 recognize that the contents of the transcript in question directly contradict the factual
17 allegations Mr. Huntsman made in the motion. His filing of the Motion to Redact thus
18 violated Rule 9011(b)(3).

26 ²⁸Mr. Huntsman also asserted that the transcript should be redacted because it did not
27 contain his side of the story. Mr. Huntsman is reminded that this is typical for a judicial
28 ruling on a matter. A attorney who loses his case is not afforded the right of rebuttal in
factual findings, especially when he choses not to appeal from the order related to them.

III. Sanctions Imposed

Sanctions under Rule 9011 are deterrent in nature. Rule 9011(c)(2) (“A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated”); *Brooks-Hamilton*, 329 B.R. at 283. The text of Rule 9011 requires that the sanctions imposed by a court “be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.” Rule 9011(c)(2). Due to the wide variety of improper conduct, a court imposing sanctions under Rule 9011 “has wide discretion in determining what sanction” should properly be imposed. *Brooks-Hamilton*, 329 B.R. at 283 (citing *Kowalski-Schmidt v. Forsch (In re Giordano)*, 212 B.R. 617, 622 (B.A.P. 9th Cir. 1997), *aff’d in part, rev’d in part on other grounds*, 202 F.3d 277 (9th Cir. 1999) (unpublished table decision)).²⁹

The court is confronted with conduct that violated Rule 9011 in myriad ways. The court has taken this pattern of conduct into consideration in crafting an appropriate package of deterrent sanctions. Before detailing the sanctions, however, the court notes that Mr. Huntsman is not alone in practicing the type of conduct that has led to this opinion, although the facts here are particularly egregious. Many attorneys file what they assert is the evidentiary support for the factual contentions made in their pleadings, yet take no steps to authenticate the documents they attach. When motions are not supported by admissible evidence, attorneys responsible for those filings violate paragraph 3 of Rule 9011(b),³⁰ and

²⁹The court is cognizant of the American Bar Association Standards for Imposing Lawyer Sanctions (the “ABA Standards”), particularly the section of the ABA Standards that addresses aggravating and mitigating circumstances. The court has considered these standards to the extent they are applicable. As discussed above, the imposition of sanctions is within the court’s sound discretion. The court, therefore, declines to “slavishly intone[]” the ABA Standards in situations where they are not fully applicable. *In re Brooks-Hamilton*, 400 B.R. 238, 255 (B.A.P. 9th Cir. 2009) (Markell, J., concurring). As recently recognized by the Ninth Circuit Bankruptcy Appellate Panel, the ABA Standards are sometimes a “helpful guide;” however, consideration of the ABA Standards is not mandatory, as this would be “inconsistent with the discretion needed for a bankruptcy court to remedy attorney misconduct” *In re Nguyen*, 447 B.R. 268, 277 (B.A.P. 9th Cir. 2011).

³⁰Many times the failure to authenticate is not material, as no objection is raised. But the lawyer acts at his or her own peril when choosing to engage in such conduct.

1 thereby risk exclusion of potentially important and relevant evidence. *See, e.g., Latman v.*
2 *Burdette*, 366 F.3d 774, 787 (9th Cir. 2004) (exclusion of bank records for lack of proper
3 authentication and lack of declaration establishing business records exception to hearsay
4 rule). The court hopes that this opinion serves as a reminder to these attorneys and deters
5 them from conducting themselves in a manner similar to that of Mr. Huntsman.

6 To return to the matter at hand, as sanctions for his conduct in this matter, the court
7 sanctions Mr. Huntsman as follows:

- 8 (1) Mr. Huntsman is hereby barred from filing any motion to reconsider or set
9 aside an order in the United States Bankruptcy Court, District of Nevada,
10 unless such motion has been pre-screened and found to have initial merit by
11 this court;
- 12 (2) Mr. Huntsman is hereby barred from filing any motion to redact a transcript
13 or strike a document filed in the United States Bankruptcy Court, District of
14 Nevada, unless such motion has been pre-screened and found to have initial
15 merit by this court;
- 16 (3) Mr. Huntsman is hereby publicly reprimanded through this published opinion
17 detailing the impropriety of his actions and his violations under Rule 9011; and
- 18 (4) The court will refer this matter to the State Bar of Nevada, to allow that body
19 to determine whether it wishes to initiate further disciplinary proceedings
20 against Mr. Huntsman, or to conduct any inquiry into his fitness as an
21 attorney.³¹

22
23
24 ³¹The court here explicitly notes that it has considered Mr. Huntsman's apology for
25 his decision to file the Motion to Redact as a mitigating circumstance. It is for this reason
26 that the court has decided not to impose a monetary fine on Mr. Huntsman. But for this
27 apology, and the sincere manner in which it was offered, the court likely would have levied a
28 significant monetary sanction against Mr. Huntsman.

The court will also delay publication of this opinion and delivery of it to the Nevada
State Bar for 14 days after entry to allow Mr. Huntsman to appeal and seek a stay pending
appeal. If no stay is obtained, publication and delivery to the State Bar will automatically
occur.

1 A reader might reasonably ask why the court has spent so much time on such
2 seemingly minor infractions. After all, the Press Release was childish, and Mr. Huntsman's
3 quixotic quest to reverse the 2006 sanctions is not common. Tolerance of these banal
4 transgressions, however, would send the unfortunate message to others that such slipshod
5 practices are acceptable. That obviously is the wrong message.

6 It may be, as Mr. Huntsman asserts, that he helps many or even most of his clients –
7 but that is beside the point. While clients cannot reasonably expect legal brilliance with every
8 representation, they are entitled to consistent, accurate, and competent legal advice. In short,
9 Mr. Huntsman's clients deserve more than an attorney who exhibits competence “most” of
10 the time. To let Mr. Huntsman and others like him to continue to take money from
11 vulnerable consumers without rendering consistently competent legal advice cannot stand,
12 and Mr. Huntsman's actions in the matter call into question his general competence. The
13 referral to the Nevada State Bar is designed to assess whether Mr. Huntsman can provide this
14 level of representation to his clients.³²

15 These sanctions are designed to deter Mr. Huntsman from engaging in conduct that
16 will similarly violate Rule 9011. It is the hope of the court that the sanctions here imposed
17 on Mr. Huntsman will also serve to deter other attorneys from violating Rule 9011; that is
18 the point of publishing this opinion. If both Mr. Huntsman and other attorneys know that
19 the penalty for such egregious violations includes the notoriety that accompanies a published
20 opinion, as well as consequences that reach beyond the bankruptcy courthouse in the form
21 of a referral to the State Bar of Nevada, they may exercise greater care in conforming their
22 conduct to the requirements of Rule 9011.

23
24 ³²The court notes that this is not the first time Mr. Huntsman has been sanctioned.
25 His publicly available bar record indicates he has been twice disciplined by the Nevada State
26 Bar: he was once publicly reprimanded, and on another occasion, his ability to practice was
27 temporarily suspended. *See* Bar Record of Rulon J. Huntsman,
28 <http://www.nvbar.org/lawyer-detail/11463> (last visited Oct. 12, 2011). These actions have
resulted in reciprocal sanctions in Utah. *See* UTAH STATE BAR JOURNAL, September 2008,
reprinted in Utah Bar Journal, Attorney Discipline, *Reciprocal Discipline*,
http://webster.utahbar.org/barjournal/2008/09/attorney_discipline_1.html (last visited Oct.
12, 2011).

1 **IV. Conclusion**

2 As discussed at length above, Mr. Huntsman's conduct in this matter fell well below
3 that which Rule 9011 requires. This court thus sanctions him for that conduct. The court
4 does not impose sanctions lightly and finds this to be one of the least rewarding aspects of its
5 duties. In exercising its discretion, the court has acted with thought and care to draft a set of
6 sanctions that will serve to further the purpose of Rule 9011: to deter repetition this type of
7 sanctionable conduct and to prevent comparable conduct by others similarly situated.

8 This opinion constitutes findings of facts and conclusions of law under Rule 7052,
9 made applicable here by Rule 9014(c).

10 The court hereby ORDERS Rulon J. Huntsman SANCTIONED as set forth in detail
11 above.

Appendix I – Letter to Senator Reid

United States Senate
Washington, DC 20510-7012

December 10, 2010

Mr. Rulon J. Huntsman
Attorney at Law
XXX South Eastern Ave
Las Vegas, NV 89104-xxxx

Dear Mr. Huntsman:

Thank you for contacting me. I appreciate hearing from you.

As you may know, the Senate passed the Bankruptcy Abuse Prevention and Consumer Protection Act (S.256) on March 10, 2005 by a vote of 74-25. I believe that people who have the ability to repay their debts should be required to do so. I supported S.256 because it put that principle into law and was an improvement over the previous law.

I noted your inquiry into the validity of "SB41006", which "permits the chief Bankruptcy Judge of each District in the PST zones to pick a random day after giving notice to such citizens in that state they may file bankruptcy under the old bankruptcy code . . ." After an exhaustive search, my staff has confirmed that no such legislation was ever passed or introduced in Congress. Furthermore, my staff confirmed that there is no mention of the alleged computer virus "2HC-AFJ" in the Congressional Record.

I regret to learn of the difficulties you are currently facing and hope this information is helpful.

My best wishes to you.

Sincerely,

HARRY REID
United States Senator
Nevada

HR:cs

Copies sent to:

CM/ECF ELECTRONIC NOTICING
BNC MAILING MATRIX

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